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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**JUN 13 1997**

Federal Communications Commission  
Office of Secretary

In the Matter of )  
Request for Clarification of FCC's Rules re: )  
Interconnection Between Local Exchange )  
Carriers and Commercial Mobile )  
Radio Service Providers )

CC Docket Nos. 95-185, 96-98

**To: Common Carrier Bureau**

**COMMENTS OF METROCALL, INC.**

Frederick M. Joyce  
Its Attorney

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Date: June 13, 1997

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## SUMMARY

SWB has initiated this proceeding to ask the FCC for clarification concerning its LEC/CMRS interconnection rules. In particular, SWB has asked the Bureau to determine: "where in the Commission's rules LECs are permitted to recover costs associated with paging interconnection or, alternatively, whether a change in the rules needs to be made to allow LECs to recover such reasonable costs."

Five of the nation's largest paging carriers have disputed SWB's interpretation of the FCC's Rules and of applicable statutory provisions. They contend that the FCC's Rules do not allow any LECs to charge carriers for "traffic" or "facilities" with respect to LEC-originated local traffic. The Paging Companies also characterize SWB's "request for clarification" as an untimely request for reconsideration of Rule Section 51.703(b).

Metrocall concurs with the Paging Companies: the FCC's interconnection rules, and the Communications Act as amended by the Telecommunications Act of 1996, preclude LECs from charging paging carriers for traffic or facilities used to transport LEC-originated local traffic to a paging network. Indeed, at least two of the Regional Bell Operating Companies concur with that conclusion. Moreover, the California Public Utilities Commission recently ordered a third RBOC to follow suit and cease charging paging carriers for local traffic. The Bureau should use this proceeding to clarify that LECs cannot charge paging carriers for local transport of LEC-originated traffic, and to clarify some other related issues concerning the FCC's interconnection rules.

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**To: Common Carrier Bureau**

**COMMENTS OF METROCALL, INC.**

Metrocall, Inc., through its undersigned counsel and pursuant to the FCC's May 22, 1997 Public Notice (CCB/CPD 97-24), respectfully submits these Comments. The Common Carrier Bureau has sought comments in response to Southwestern Bell Telephone Company's ("SWB") request for clarification of the FCC's local exchange carrier ("LEC")/commercial mobile radio service ("CMRS") interconnection rules.<sup>1</sup>

**I. Statement of Interest**

Metrocall is the fifth largest paging company in the nation (NASDAQ trading symbol: "MCLL"). Through its licensee-subsiary, Metrocall USA, Inc., Metrocall provides commercial radio paging services throughout most of the United States. Through its corporate predecessors, Metrocall has provided paging services for more than a decade, and it continues to undergo

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<sup>1</sup> The FCC's Part 51 interconnect rules were adopted in "Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al.", First Report and Order, CC Docket Nos. 96-98; 95-185 (August 8, 1996), appeal pending, Iowa Utilities Board v. FCC, No. 96-3321, *et seq.* (the "Interconnect Order").

tremendous growth. Metrocall's paging facilities serve the Northeast, Mid-Atlantic, Southeast, Southwest and West Coast, and it is in the process of expanding that network throughout other regions of the country through "new" applications and through acquisitions. Metrocall currently serves more than two million subscribers over its paging facilities, and is actively pursuing business plans to increase its customer base nationwide.

Although Metrocall is not one of the paging companies that is directly involved in the subject interconnect billing dispute with SWB, Metrocall is facing similar problems with several Regional Bell Operating Companies, and independent telephone companies throughout the country. The FCC's resolution of SWB's questions will certainly establish precedents for, and have an immediate impact on, Metrocall's interconnection arrangements with all these LECs throughout the United States. Consequently, Metrocall has standing as a party in interest to submit these Comments.

## **II. Summary of this Inquiry**

SWB has initiated this proceeding to ask the FCC for clarification concerning its LEC/CMRS interconnection rules. In particular, SWB has asked the Bureau to determine: "where in the Commission's rules LECs are permitted to recover costs associated with paging interconnection or, alternatively, whether a change in the rules needs to be made to allow LECs to recover such reasonable costs." (SWB letter to R. Keeney, Chief, April 25, 1997, at p. 4). SWB seems to concede that Rule Section 51.703(b) would preclude LECs from recovering these costs from paging carriers.<sup>2</sup> Nevertheless, SWB suggests that Rule Section 51.709(b) provides

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<sup>2</sup> Section 51.703(b) states in full as follows: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the

alternative authority for the LECs to charge paging carriers for local traffic "facilities".<sup>3</sup>

Five of the nation's largest paging carriers (the "Paging Companies") have disputed SWB's interpretation of the FCC's Rules and of applicable statutory provisions. They contend that the FCC's Rules do not allow any LECs to charge carriers for "traffic" or "facilities" with respect to LEC-originated local traffic. (Paging Companies' letter to R. Keeney, May 16, 1997, at pp. 4-5). The Paging Companies also characterize SWB's "request for clarification" as an untimely request for reconsideration of Rule Section 51.703(b).

Metrocall concurs with the Paging Companies: the FCC's interconnection rules, and the Communications Act as amended by the Telecommunications Act of 1996, preclude LECs from charging paging carriers for traffic or facilities used to transport LEC-originated local traffic to a paging network. Indeed, at least two of the Regional Bell Operating Companies concur with that conclusion. Moreover, the California Public Utilities Commission recently ordered a third RBOC to follow suit and cease charging paging carriers for local traffic. The Bureau should use this proceeding to clarify that LECs cannot charge paging carriers for local transport of LEC-originated traffic, and to clarify some other related issues concerning the FCC's interconnection rules.

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LEC's network."

<sup>3</sup> Section 51.709(b) states in full as follows: "The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods."

### **III. The Intent of the FCC's LEC/CMRS Interconnection Rules**

The FCC's LEC/CMRS interconnection rules accurately reflect the statutory obligations imposed on *all* LECs by the Telecommunications Act of 1996's ("Telecom Act") amendments to the Communications Act of 1934 (the "Act"). In adopting the Telecom Act, Congress sought to break-down the local telephone network to its basic elements, thereby promoting competitive access to that local market. See Conference Report, accompanying Senate Bill 652 (the Telecom Act). Consistent with that goal, Section 251(b) of the Telecom Act, upon which the FCC's interconnect rules are based in part, states that LECs have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." See 47 U.S.C. §251(b).

FCC Rule Section 51.703(c) accurately interpreted this statutory provision to mean that, in fulfilling their reciprocal compensation obligations, LECs could not charge other telecommunications carriers (including paging carriers) for traffic that they originate. The FCC concluded that "a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic", and, as of the "effective date" of that FCC Order (August 30, 1996), the LEC "must provide that [LEC-originated] traffic to the CMRS provider or other carrier without charge." <sup>4</sup>

Nevertheless, SWB contends that with respect to LEC/paging traffic, the FCC's rules result in an inequitable situation: paging carriers receive "free" local telephone service, and the LECs have to absorb the costs of landline to paging traffic and facilities. Metrocall disagrees with that entire premise. If the LECs were giving away their local phone services, SWB's

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<sup>4</sup> Interconnect Order at ¶ 1042 (emphasis added).

conclusions might be valid; however, SWB ignores one essential fact: the LECs charge their local customers for the right to make local calls to paging networks. So, when SWB asks how it will be "permitted to recover [its local calling] costs", the answer should be obvious: the calling party should pay for those costs, just as they pay for any other local calls.

SWB is entitled to recover its legitimate costs in transporting local calls to a paging network or any other called party; but, they have no right to unilaterally transfer the costs of those calls to paging carriers. Until recently, LECs routinely billed paging carriers for the *entire* end-to-end call; and many LECs routinely added on to paging carriers' telephone bills monthly recurring charges for telephone numbers, NXX codes, and "call termination" charges. Congress and the FCC intended to eliminate these patently inequitable billing practices beginning in 1993. In amending Section 332 of the Act, Congress explicitly granted CMRS operators "co-carrier" status with the LECs.

The FCC incorporated those statutory requirements into Part 20 of its Rules, which now states in pertinent part as follows: "A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request ...." 47 C.F.R. § 20.11(a)(1993). Those rules also require LECs to compensate CMRS operators for "terminating traffic that originates on facilities of the local exchange carrier." Id.

Contrary to SWB's assertions, Rule Section 51.709(b) does not provide the LECs with independent authority to charge paging carriers for LEC-originated local traffic *or* facilities. Section 51.709 is a "mutual compensation" rule, which expressly pertains to the "rate structures for transport and termination". This rule simply expresses the FCC's guidelines for calculating

what costs may be included in the rates carriers charge each other for traffic that flows "*between*" two carriers' networks. See 47 C.F.R. 51.709(b). Traffic does not flow "*between*" the LECs and a paging network; it flows only one way, into a paging network; hence, this rule simply does not apply to LEC/CMRS traffic patterns.<sup>5</sup>

Despite these laws that evidently support the Paging Companies' contentions, SWB seems to be asking the Bureau to reconsider the FCC's LEC/CMRS interconnection rules. Of course, the statutory period for reconsideration of the LEC/CMRS interconnection rules has long since expired, and SWB's request for a, to put it charitably, "different" interpretation of those rules is also untimely. See, e.g., Commercial Realty St. Pete, Inc., 4 CR 1409, ¶ 7 (1996) (opposition of licensee to notice of apparent liability for violation of anti-collusion and IVDS auction rules, challenging the legality of those rules, was an untimely petition for reconsideration); Association of College and University Telecommunications Administrators, 8 FCC Rcd. 1781, ¶¶ 5-6 (1993) (petition for declaratory ruling concerning definition of "call aggregators" was in substance a petition for reconsideration of rule making adopting definition; petition dismissed as untimely where it was filed nearly nine months after the statutory reconsideration deadline).

In addition to the procedural infirmities of SWB's request, SWB is mistaken on the facts. SWB contends that paging carriers are "cost causative" (SWB letter at p. 2, n.2); the facts are to

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<sup>5</sup> At least one paging carrier explained to the FCC during the interconnection rulemaking proceedings, that it would make sense for the agency to adopt a separate set of rules for LEC/paging interconnection, due to the unique nature of one-way traffic patterns. See Celpage, Inc. Comments. The FCC did not follow that suggestion. In fairness, since the interconnection rules seem to have been drafted mainly with two-way traffic in mind, it is perhaps no great surprise that some of the LECs are having difficulty making sense of them.

the contrary. Paging "switches" (the paging terminal), installed and maintained at the paging carriers' expense, complete all of these local calls for the LECs at no charge to the LECs. There is simply no other example extant wherein the LECs get a "free ride" on another carriers' facilities; SWB is most certainly compensated for traffic that is terminated on its switches. Indeed, to Metrocall's knowledge, no LEC has ever paid a paging company a single penny for completing any of these local calls. Although the FCC's rules require the LECs to compensate paging carriers for call termination, the LECs have simply ignored that requirement since the rules' passage in 1993.

Also, the majority of paging units in service are used for business purposes. Thus, it is reasonable to assume that the majority of calls placed to paging units are over "business" lines. SWB presumably reaps substantial message unit revenues from each short-duration call placed to a paging network. It is somewhat disingenuous for SWB to ignore these essential facts in its letters to the Bureau. Moreover, paging "traffic" is probably the most efficient telephone traffic extant, and typically does not require additional LEC facilities expenditures. In short, even if SWB's request for reconsideration of the LEC/CMRS interconnect rules was not so patently untimely, it is unsupported by any objective facts.

Regardless of what it actually costs the LECs to deliver a call to a paging network, the fact is that as a matter of federal law the LECs are barred from passing these costs on to the terminating carrier. If SWB wants to reconsider its local calling rates in light of federal law and changes in local calling patterns, so be it; nevertheless, it has no right or legal authority to shift those costs to paging carriers.

**IV. Other RBOCs Concur with the Paging Industry**

The paging industry is not alone in its interpretation of the LEC/CMRS interconnection rules. At least two of the RBOCs have agreed from the very release of the FCC's Interconnection Order that they could no longer charge paging carriers for local transport and call termination within the local calling area (defined by the FCC to include the corresponding MTA). Attached hereto as Exhibit One are letters from Nynex and Bell Atlantic that confirm this understanding of the FCC's rules. Metrocall has had nothing but cordial relations with these carriers; there was no need to threaten litigation or withhold disputed telephone charges to get these carriers to reach the same conclusion shared by the paging industry.

Likewise, a third RBOC, Pacific Bell, recently stipulated to the California Public Utilities Commission that it would no longer charge a paging carrier for local traffic. See Interim Opinion, at p. 6, Application 97-02-003, Cal. PUC (May 21, 1997) (attached hereto as Exhibit Two).

SWB's local costs for interconnected paging traffic are no different than those of these RBOCs. SWB ought to comply with federal law as have these carriers.

**V. The FCC Should Assert Jurisdiction over These Matters**

Metrocall firmly believes that the FCC should use this inquiry to remind all LECs that the FCC has primary jurisdiction over LEC/CMRS interconnection disputes, including, but not limited to, disputed interpretations of Part 51 of the FCC's Rules. Many LECs have kowtowed paging carriers into paying these unlawful local charges, by threatening to disconnect their service, or tie them up in local interconnection/arbitration proceedings before local public utilities commission. In light of the multi-state, wide-area nature of most paging services, this is

an invitation to disaster. Assuming the LECs fail to eliminate local calling charges in their proposed interconnection agreements (a fair assumption), paging carriers will be forced to spend enormous amounts of time and money engaged in unnecessary arbitration/mediation proceedings before every public utility commission in which they provide wide-area paging services. That result cannot possibly be squared with the Act, the FCC's Rules, and decades' worth of FCC precedents.

By legislative mandate and historical precedent, LEC/CMRS interconnection terms and conditions are subject to the FCC's primary jurisdiction. If that was not clear to the LECs prior to 1993, the FCC should have eliminated all doubts in its Commercial Mobile Radio Service rulemaking proceedings. Therein it adopted, among other rules, Rule Section 20.11 which states in pertinent part as follows: "A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request ...." See 47 C.F.R. § 20.11(a)(1993). The FCC therein also stated that any alleged violations of the FCC's interconnection rules could be brought before the FCC in a Section 208 [of the Act] complaint. Id.

Three years prior to the adoption of the Telecom Act, this rule section also required LECs to "pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier." See 47 C.F.R. 20.11(b)(1).

Metrocall and many other carriers have been reluctant to initiate compensation negotiations with the RBOCs and independent LECs, due to the implicit threat that these negotiations would end up in 50 different "rate" proceedings before 50 different PUCs. SWB's

inquiry confirms these fears, and sends a clear signal that some of the RBOCs and LECs will not willingly comply with the FCC's mutual compensation rules. The FCC ought to take this opportunity to remind the LECs that, as with any violation of the FCC's interconnect rules, any violations of the FCC's "mutual compensation" rules could be resolved in formal complaint proceedings before the FCC, and, that such complaints will be expeditiously resolved.

#### **VI. Other FCC Clarifications are Needed**

SWB's inquiry raises related questions that the FCC should resolve in this proceeding. For example, there is considerable dispute between LECs and CMRS operators as to the applicable effective date for FCC Rule Section 51.703(b). Clarification of this issue will have an enormous impact on the credits owed by LECs to paging carriers for local transport charges. Most of the LECs have taken the position that this rule was at least temporarily stayed by the Eighth Circuit Court of Appeals, and that the "Effective Date" should not be until November 1, 1996, when that stay was lifted.

Metrocall disagrees with that position, and submits that this interconnection rule became effective when published by the FCC. First of all, the Eighth Circuit has never explained whether its "temporary stay" of Rule Section 51.703(c) was inadvertent or not; hence, the LECs cannot legitimately argue that there has been some adjudication of this issue. Moreover, the LECs did not appeal this particular interconnection rule (indeed, they did not even address this rule until CMRS intervenors asked the Court to lift the stay regarding the LEC/CMRS rules). Consequently, the LECs cannot sincerely argue that they are entitled to a 30-60 day "credit" from local transport charges, since they never asked for relief from this FCC Rule. The FCC should clarify that its local transport interconnect rules became effective on their publication

date.

Also, the FCC did not previously answer another LEC/paging interconnect question posed by some of the Paging Companies. Some carriers had previously asked the Bureau whether the FCC would enjoin a LEC from disconnecting service if a paging carrier stopped paying these unlawful local transport charges. The Bureau never answered that question. An answer to that question seems particularly necessary and appropriate in light of this on-going payment dispute between these Paging Companies and SWB.

Metrocall and other paging companies have continued to pay some of these LECs, under protest, because the LECs did not voluntarily stop charging for local traffic/transport. The FCC should take this opportunity to clarify how the FCC will assist paging carriers in obtaining rebates or credits for these payments, dating back to the effective date of the FCC's interconnection rules. For instance, it would make little sense, and squander substantial agency and carrier resources, if paging carriers were required to file formal Section 208 Complaints before the FCC to recover these back-payments for local transport. A more equitable and reasonable solution would be for the FCC to simply issue a public notice to all LECs ordering them to credit paging carriers for these charges as of the effective date of the FCC's rules.

**Conclusion**

For all the foregoing reasons, Metrocall respectfully requests that the Bureau order all LECs to immediately cease and desist from charging paging carriers for local transport of LEC-originated traffic, and order the LECs to credit or issue rebates to all paging carriers for these charges dating back to the effective date of the FCC's LEC/CMRS interconnection rules, and to take such other actions as are consistent with the forgoing comments.

Respectfully submitted,

METROCALL, Inc.

By 

Frederick M. Joyce  
Its attorney

JOYCE & JACOBS, Attorneys at Law, LLP  
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Date: June 13, 1997

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## CERTIFICATE OF SERVICE

I, Regina Wingfield, a legal secretary in the law firm of Joyce & Jacobs, Attys. at Law, LLP, do hereby certify that on this 13th day of June, 1997, copies of the foregoing Comments of Metrocall, Inc., were mailed, postage prepaid, to the following:

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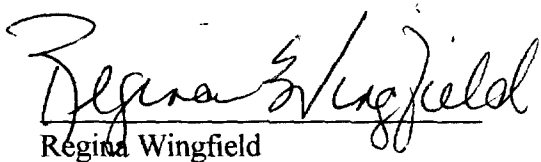
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# **EXHIBIT ONE**

Bell Atlantic Network Services, Inc.  
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Newark, New Jersey 07102

December 3, 1996

Frederick M. Joyce  
Joyce & Joyce  
1019 19th Street, N.W.  
Fourteenth Floor  
Washington, D.C. 20036

**Re: Metrocall-Bell Atlantic Interconnection**

**Dear Mr. Joyce:**

This responds to your letter of November 19, 1996 to William Mengel regarding interconnection arrangements between your client Metrocall, Inc. and Bell Atlantic. Bell Atlantic is committed to working with Metrocall to revise our interconnection agreement as required by the changes in the law.

We agree with your analysis that Metrocall is no longer obligated to pay any charges associated with Metrocall's termination of LEC-originated intraMTA traffic. Therefore, Bell Atlantic will no longer impose such charges. The effective date of this change, however, is not August 30, 1996, as your letter suggests, but November 1, 1996, the date on which the United States Court of Appeals for the Eight Circuit lifted the stay that had prevented recently adopted ¶ 51.703 of the FCC's rules from going into effect. In addition, Bell Atlantic will continue to provide Metrocall non-discriminatory access to telephone numbers.

As you are no doubt aware, each LEC's reciprocal compensation obligation arises only with regard to local traffic originated on that LEC's network, which in Bell Atlantic's case is traffic that originates on Bell Atlantic's network and terminates in the same MTA on Metrocall's network. Bell Atlantic-originated traffic that terminates on Metrocall's network in a different MTA than that from which it originated is not subject to reciprocal compensation under ¶ 51.703. In addition, traffic that originates with a third party and transits Bell Atlantic's network is not Bell Atlantic-originated traffic and thus does not trigger any Bell Atlantic obligation to provide reciprocal compensation under ¶ 51.703(b). Accordingly, in order to implement ¶ 51.703, Metrocall must provide Bell Atlantic with information regarding the portion of Metrocall's terminating traffic (1) that is originated by carriers other than Bell Atlantic yet terminates within the originating MTA, or (2) that originates outside the MTA in which it terminates.

Finally, Metrocall is responsible for collecting its transport and termination charges for terminating traffic that originates with carriers other than Bell Atlantic. For such transit traffic, Bell Atlantic will not recover from third party carriers terminating interconnection charges to

which Metrocall may be entitled. We suggest that to collect such charges, Metrocall should, like other carriers, enter into interconnection agreements with originating LECs or file applicable tariffs. Indeed, under § 251(b) of the Act, Metrocall has a duty to establish reciprocal compensation arrangements with other telecommunications carriers originating calls that terminate on its network.

I too look forward to working with Metrocall to implement a new agreement. Please call me on (201) 649-8098 to set up a meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lois Silika".

Lois Silika



Derek Dellabough  
NYNEX  
222 Bloomingdale Road  
White Plains, NY 10605

December 13, 1996

Frederick M Joyce  
Joyce and Jacobs  
1019 19th Street, NW, 14th Fl  
Washington, DC 20036

Dear Frederick:

This is in response to your letter to NYNEX dated November 19, 1996. I have looked into the issues you raised and offer the following :

As of the effective date of the FCC's August 8, 1996 Interconnection Order and Rules implementing The Telecomm Act of 1996, NYNEX can not charge for calls which originate on the LEC network and terminate on a CMRS provider's network. The FCC's Rules were originally stayed by the Eighth Circuit Court of Appeals. The stay was subsequently lifted by the Court as to CMRS providers on 11/01/96.

As of November 1, 1996 NYNEX will no longer charge 3B customers in New England the monthly charge for the facility to collect the calls at a paging company's switch. For new facilities the paging company will pay the nonrecurring charge to install the facility.

For 3A service the customer will still pay the usage charges associated with completing the call to the paging company as this is an optional reverse billing arrangement chosen by the paging company. Existing rates will apply until new rates are negotiated. The paging company will also pay the nonrecurring charge to install new facilities.

For paging companies in New York, if the paging company orders Type 2 service they pay only the nonrecurring charge to install the facility and no charge for numbers.

(Same as today.) If a paging company orders Type 1 service the paging company will pay the nonrecurring charge for the facility but no monthly recurring charge.

NYNEX will collect the charges from its end user customers for calls to paging companies unless the paging company has requested a reverse billing option like 3A service.

NYNEX will enter into a reciprocal compensation arrangement once the paging company has filed cost studies with the respective state commissions and had them approved. The details of billing for reciprocal compensation will be negotiated following state commission approval of the cost studies. Payment of reciprocal compensation will also be governed by the outcome of pending Petitions for Reconsideration and appeal proceedings.

Also, there are no charges for NXX codes in New England or New York. If a charge is ever established, it will be the same for all carriers.

If I have overlooked any particulars or you have any questions please call me on 914-644-4791

Sincerely,

**DEREK DELLABOUGH**

Account Manager

# **EXHIBIT TWO**

COM/JXK/sid \*

15855-24.2

Mailed

MAY 23 1997

Decision 97-05-095 May 21, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Cook Telecom, Inc.,	)	
for arbitration pursuant to Section	)	
252 of the Federal Telecommunications	)	Application 97-02-003
Act of 1996 to establish an	)	(Filed February 3, 1997)
interconnection agreement with	)	
Pacific Bell.	)	

David M. Wilson and David A. Simpson,  
Attorneys at Law, for Cook Telecom,  
Inc., applicant.

Thomas J. Ballo and David Discher,  
Attorneys at Law, for Pacific Bell,  
respondent.

Karen Jones, Marc Kolb and Mike Watson, for  
the Commission's Telecommunications  
Division.

INTERIM OPINION

1. Summary

We reject the Arbitrated Interconnection Agreement between Cook Telecom, Inc. (Cook or applicant) and Pacific Bell (Pacific or respondent) because it fails to provide for compensation to Cook for the costs that Cook incurs in terminating calls to its paging customers. Accordingly, the agreement fails to comply with Sections 251(b)(5) and 252(d)(2)(A)(i) of the Telecommunications Act of 1996 (Act) and our Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996, Resolution ALJ-168 (Rules). We further order the parties to file an agreement in conformance with this decision.

2. Background

On February 3, 1997, Cook filed a timely application for arbitration of terms, conditions and rates for interconnection with Pacific. Pacific filed a timely response on February 28, 1997.

A.97-02-003 COM/JXK/sid

Arbitration hearings were held on March 12 and 13, 1997. Opening briefs were filed and served on March 24, 1997, and reply briefs were filed and served on March 31, 1997.

An Arbitrator's Report was filed and served on April 21, 1997. On April 28, 1997, parties filed and served a conformed agreement in compliance with the Arbitrator's Report. On May 2, 1997, parties filed and served comments on the Arbitrator's Report and the conformed agreement.

### 3. Arbitrated Agreement

The threshold issue is whether applicant is entitled to transport and termination compensation. We conclude, contrary to the Arbitrator's Report, that applicant is so entitled pursuant to the Act.

Under Rule 4.2.4, we may reject an arbitrated agreement or portions thereof that do not meet the requirements of Section 251 of the Act, regulations prescribed under Section 251 by the Federal Communications Commission (FCC) or the pricing standards set forth in Section 252(d) of the Act. Pursuant to Section 252(e) (3) of the Act, we may also reject agreements or portions thereof which violate other requirements of the Commission. For the reasons set forth below, we reject the arbitrated agreement filed by the parties and order the parties to file an agreement in compliance with this decision.

#### 3.1 Act and FCC Regulations

Respondent has a duty under Section 251 "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." (Section 251(b)(5).) Section 252(d) further provides that a State Commission shall not consider terms and conditions for reciprocal compensation just and reasonable unless the "terms and conditions provide for the mutual and reciprocal recovery" of costs "by each carrier." (Section 252(d)(2)(A)(i).)

A.97-02-003 COM/JXK/sid \*

Applicant is a one-way paging company. Applicant does not originate traffic for termination on respondent's network. Respondent argues that because traffic flows only one-way -- i.e., respondent always terminates traffic on the applicant's network -- and respondent never terminates traffic on its network from the applicant, applicant is not entitled to compensation because such compensation is not "mutual" or "reciprocal" within the meaning of Section 251(b)(5) of the Act.

We disagree. Under Section 251(a) of the Act, respondent has a duty to interconnect with applicant who otherwise qualifies as a "telecommunications carrier" providing "telecommunications service" within the meaning of the Act. (47 U.S.C. §§3(44) & (46)). In fulfilling this duty, respondent has an obligation under Section 251(b)(5) "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Under Section 252(d)(2) the state is to ensure that "terms and conditions for reciprocal compensation" "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." (emph. added).

In creating these duties, Congress did not carve out an exception with respect to those telecommunications carriers providing a telecommunications service that consisted of one-way paging. To the contrary, Congress broadly required local exchange carriers to interconnect with all providers of communication services meeting the definitional sections of the Act, and to compensate each carrier on reasonable terms and conditions for the costs that it incurs in terminating calls to the called party that originate on the local exchange carrier's network.

Respondent does not dispute that there are costs incurred by applicant in terminating calls to applicant's customers. We do not think that Congress intended a result that, on the one hand,